

222 DELAWARE AVENUE, SUITE 900  
P.O. BOX 25130  
WILMINGTON, DE 19899  
ZIP CODE FOR DELIVERIES: 19801

THE BAYARD FIRM  
A T T O R N E Y S

 MERITAS LAW FIRMS WORLDWIDE  
www.bayardfirm.com  
302-655-5000  
(FAX) 302-658-6395  
WRITER'S DIRECT ACCESS

ELECTRONICALLY FILED

(302) 429-4208  
rkirk@bayardfirm.com

October 3, 2005

The Honorable Kent A. Jordan  
United States District Court  
844 North King Street, Lock Box 10  
Wilmington, DE 19801

RE: Kutten, et al. v. Bank of America, N.A., et al.  
Miscellaneous Action Case No. 05-20-KAJ

Dear Judge Jordan:

Pursuant to the Order dated September 23, 2005, Nations Funds Trust ("Nations") provides the following update regarding the discovery at issue in *Kutten v. Bank of America*, No. 05-20-KAJ (D. Del. June 16, 2005) (the "Delaware Action"). Nations recently learned that Plaintiffs' counsel is currently out of the country and has been unavailable to comment on this update.

On July 13, 2005, U.S. Magistrate Judge Terry Adelman conducted the Rule 16 Conference in *Reinke v. Bank of America*, No. 4:04-CV-1758 (E.D. Mo. filed Dec. 16, 2004) ("*Reinke*"), the case similar to *Kutten v. Bank of America*, No 4:05-CV-244 (E.D. Mo. filed Feb. 27, 2004), in which Nations Funds Trust ("Nations") is a party. Judge Adelman entered a Case Management Order on July 26, 2005, establishing a scheduling plan for discovery and allowed discovery to commence. The parties' Rule 26(a) disclosures are due November 30, 2005.

Plaintiffs have served three sets of document requests on Nations in *Reinke*, including, "Plaintiffs' Request for Production of Documents – August 10, 2005," "Plaintiffs' Corrected Request for Production of Documents – September 9, 2005," and "Plaintiffs' Corrected Request for Production of Documents – September 12, 2005." Plaintiffs' recent document requests are substantially similar to the requests at issue in the Delaware Action.

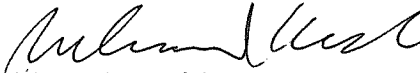
THE BAYARD FIRM

The Honorable Kent A. Jordan  
October 3, 2005

On September 12, 2005, Nations responded to Plaintiffs' August 10, 2005, document requests and agreed to produce certain documents subject to the entry of a protective order. The parties have exchanged proposed protective orders but have been unable to reach agreement. On September 26, 2005, Nations filed a motion for the entry of an appropriate protective order.

Nations responses to Plaintiffs' September 9, 2005 and September 12, 2005, document requests are due October 17, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard D. Kirk', written in a cursive style.

Richard D. Kirk

cc: Clerk of the Court (by hand)  
All counsel as shown on the attached certificate

**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that, on October 3, 2005, he electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send automatic notification of the filing to the following:

Sidney S. Liebesman, Esquire  
Grant & Eisenhofer, P.A.  
1201 North Market Street  
Suite 2100  
Wilmington, DE 19801

The undersigned counsel further certifies that copies of the foregoing document were sent by first class mail to the following non-registered participants:

Gregory B. Jordan, Esquire  
Mary J. Hackett, Esquire  
Sharon L. Rusnak, Esquire  
Reed Smith, LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219

Jeffrey S. Russell, Esquire  
Jason E. Maschmann, Esquire  
Bryan Cave LLP  
One Metropolitan Square  
211 N. Broadway, Suite 3600  
St. Louis, MO 63102

Steven M. Hamburg, Esquire  
Summers, Compton, Wells & Hamburg  
8909 Ladue Road  
St. Louis, MO 63124

/s/ Richard D. Kirk (rk0922)